IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 516 OF 2001

WITH

CHAMBER SUMMONS NO. 1425 OF 2001

Mr. Ramesh S. Keer .. Petitioner.

vs.

Shri Sagar L. Jain .. Respondent.

Mr. S.P. Thorat for petitioner.

Mr. Satish Kamat for Respondent.

CORAM : S.U. KAMDAR, J.

DATE : 23RD DECEMBER, 2004

P.C.

1. By the present petition, the petitioner is challenging an award dated 31.5.1996 supposed to have been passed by one Mr. V.L. Tipnis. The petitioner has contended in the present petition that in respect of the so called arbitration proceedings there is no arbitration award nor an architect ever entered upon the said arbitration reference. No notice was given to the petitioner of the so called arbitration proceedings. No award is

served on the petitioner herein. However, the respondent has straightaway taken out an execution application being Execution Application No. 437 of 2000 and sought to execute an award as against the petitioner herein.

2. The learned counsel for the petitioner has drawn my attention to an order passed by this Court on 29.7.2004. The said order is passed in a group of execution applications which were placed before the learned Single Judge of this Court. The learned Judge found that those execution applications were also similarly filed without any valid award passed by the Arbitrator. In fact it was found that in most of the matters the respondent and Arbitrator had been in collusion in making fabricated award and execute the same. In most of the matters neither there is any arbitration agreement nor there is any notice to the other side of Arbitration proceedings. In most of the cases even an award is not served on the other side.

3. By the said order dated 29.7.2004 the learned Single Judge of this Court directed the Registrar General to inquire and investigate into the facts of the matter and file a complaint if necessary under the provisions of the Indian Penal Code. The Registrar General has through the Registrar (Legal) has conducted the enquiry and the

enquiry report has been filed and has come to the conclusion that the respondent is in a habit of using forged and fabricated documents, papers and proceedings and awards and is abusing the process of the Court. It has also come to the notice that there are more than 24 applications filed for various awards which were passed by the supposed arbitrator who is also one of the Advocates of this Court. On the basis of the said bogus awards execution proceedings are filed and the various persons are threatened with the execution proceedings. This is, in my opinion, a clear attempt to abuse the process of Court and an interference with the administration of justice. The respondent herein has used the proceedings of this Court by using the forged and fabricated claims and has misguided this Court in executing an award which is in fact a non-existent award.

4. In the present case also the petitioner's case is that there is no arbitration agreement between the parties. There is no proceedings of arbitration conducted by the Arbitrator. No notice of any such proceedings is served on the petitioner. No award is served and that the execution proceedings of such baseless award has been commenced by the respondent. In fact because of commencement of such an execution proceedings the petitioner is forced to file these two proceedings

i.e. (i) An arbitration petition challenging the said award and (ii) A chamber summons for setting aside the execution proceedings. I find that the said award and execution proceedings both are bogus and clearly an abuse of process of the Court.

5. In the circumstances, I pass the following order :-

(a) Arbitration Petition No. 516 of 2001 is made absolute in terms of prayer clauses (a), (b) and (c) of the petition.

(b) In so far as Chamber Summons No. 1425 of 2001 is concerned, I direct that the Execution Application No. 437 of 2000 should be dismissed. In view thereof, the learned counsel for the petitioner seeks leave to withdraw the chamber summons no. 1425 of 2001.

(c) In light of the finding I have recorded in my order that there is a clear abuse of the process of the Court by the respondent herein, I direct the Registrar General to issue a show cause notice to the respondent under Article 215 of the Constitution of India read with sections 2 and 15 of the Contempt of Court Act to show

cause why the respondent should not be prosecuted for contempt of court for (i) using forged and fabricated documents including awards by filing the same in this Court and abusing the process by initiating execution application in that behalf, (ii) for filing false affidavit and documents in this Court and thus interfering with the due administration of justice.

(d) The Registrar General to issue the notice within a period of four weeks. Notice is made returnable on 15.2.2005. Notice to be placed before the regular court for hearing.

(d) Respondent is directed to pay cost of the proceedings in the present case quantified at Rs. 25,000/-